

7. Fluor admits that Plaintiff furnished labor and materials pursuant to its purchase order and admits that while acting in its capacity as agent for BMS, Fluor ordered such labor and materials. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations of paragraph 7.

8. Fluor denies that it owes Plaintiff the amounts alleged as Fluor was, at all times, acting solely as agent for BMS. Fluor admits that Plaintiff demanded payment of it and that Fluor, as agent for and at the direction of BMS, refused to pay the claimed amounts. Fluor denies the remaining allegations of paragraph 8.

9. Fluor denies that it owes Plaintiff the amounts alleged as Fluor was, at all times, acting solely as agent for BMS. Fluor admits that Plaintiff demanded payment of it and that Fluor, as agent for and at the direction of BMS, refused to pay the claimed amounts. Fluor denies the remaining allegations of paragraph 9.

10. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 10.

11. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 11.

Affirmative Defenses

First Affirmative Defense

Plaintiff has failed to state a claim upon which relief may be granted.

Second Affirmative Defense

Plaintiff has failed to mitigate its damages.

Third Affirmative Defense

Plaintiff's action is barred as, per the terms of its subcontract, Plaintiff acknowledged that Fluor was acting solely as agent for BMS and Fluor would have no liability to Plaintiff for payment of any amounts due to Plaintiff under its subcontract.

Fourth Affirmative Defense

Any amounts allegedly owed to Plaintiff are subject to set-off.

DEFENDANT,
FLUOR ENTERPRISES, INC.

By: /s/ David P. Russman
David P. Russman (BBO 567796)
Pepe & Hazard LLP
One Financial Center
655 Atlantic Avenue, 15th Floor
Boston, MA 02111
Tel: 617-748-5500
Fax: 617-748-5555
drussman@pepehazard.com

Dated: January 12, 2010

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, on this 12th day of January, 2010, to the following:

Leonard M. Krulewich, Esq.
Leonard M. Krulewich & Associates
29 Crafts Street, Suite 420
Newton, MA 02458
(617) 581-6116

Todd S. Holbrook, Esq.
Morgan Lewis
225 Franklin Street, 16th Floor
Boston, MA 02110-4104
(617) 341-7888

/s/ David P. Russman
David P. Russman